

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1398

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Banking and Insurance Committee; and Senator DiCeglie

SUBJECT: Consumer Protection

DATE: April 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Moody</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2. <u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	Fav/CS
3. <u>Moody</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1398 revises consumer protection laws, including, but not limited to, those related to public adjusters, annuity investments, and mortgage loan regulations.

As it relates to adjusters, the bill:

- Provides adjusting firms must comply with the same requirements an insurance agency must comply with regarding firm names, and repeals the grace period for using the terms “Medicare” or “Medicaid” that expires on July 1, 2023;
- Removes a provision providing public adjuster responsibility and a provision setting the commission rate that may be charged on the difference between the settlement offer and the actual settlement amount;
- Modifies a public adjuster’s compensation to no more than one percent, rather than up to \$1,000, of payments or commitments to pay a claim made within a specified time that is equal to or greater than the policy limit;
- Prohibits a public adjuster from charging any percentage of the amount of insurance claim payments or settlements paid to the insured where the payment or written agreement to pay occurs before the public adjuster contract is executed;
- When entering into public adjuster services after July 1, 2023, prohibits a public adjuster from collecting a fee for services or contracting with third parties on behalf of the named

insured unless certain conditions are met, and requires a public adjuster to pay third party fees in specified circumstances;

- Allows the insured or claimant to cancel a contract with a public adjuster that was entered into based on events that are the subject to a state of emergency for up to 30 days after the loss or 10 days after the date on which the contract is executed, whichever is longer;
- Specifies an insured may cancel a public adjuster's contract without penalty or obligation if a written estimate is not received within 60 days unless the failure to provide the estimate is caused by factors beyond the control of the public adjuster and provides that the cancellation period ceases on the date the estimate is provided, and requires the contract to provide notice of such right;
- Provides that a public adjuster who contracts with anyone other than the named insured must pay the fees of the third party and such charges may not be charged back to the named insured;
- Requires public adjusters to pay third party fees if the public adjuster does not first obtain the insured's written consent;
- Clarifies the exemption which allows attorneys to participate in the adjustment of any claim without an adjuster's license does not apply to certain staff of an attorney or a law firm;
- Requires an independent or public adjuster to post their license in the principal place of business or have it in the public adjuster's actual possession in certain circumstances;
- Specifies independent adjusters and public adjusters must retain certain records for five years and requires such records must be available for inspection by the Department of Financial Services ("Department") within specified times;
- Amends public adjuster contract requirements to include certain contact details and compensation; amends the font type with respect to certain provisions in the contract and proof-of-loss statement; and requires initials of the insured to be on each page that does not contain the insured's signature;
- Provides that a public adjuster must provide the insured with an unaltered copy of the contract at the time of execution and a copy provided to the insurer or insurer's representative within seven days, after execution;
- Provides a public adjuster may not receive compensation for services before the date the insured receives an unaltered copy of the executed contract or the date the contract is submitted to the insurer, and requires the public adjuster retain proof of receipt by the insured and proof of submission to the insurer for not less than five years;
- Requires the public adjuster to provide to and obtain a signed separate disclosure statement from the insured with specified information;
- Provides that a public adjuster contract which does not comply with s. 626.8796, F.S., regarding public adjuster contracts, is invalid and unenforceable;
- Authorizes the Department to have rulemaking authority to implement s. 626.8796, F.S.; and
- Amends the definition of "public adjuster."

As it relates to annuity investments, the bill:

- Amends s. 627.4554, F.S., to adopt, with minimal exceptions, the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation (2020);
- Broadens the scope of the section to apply to any sale or recommendation of an annuity;

- Amends the duties of insurers and agents to require the agent to act in the consumer's best interest which includes satisfying obligations regarding care, disclosure, conflict of interest, and recordkeeping;
- Specifies transactions for which an agent does not have an obligation to a consumer;
- Revises an insurer's obligation to establish a supervision system to provide additional consumer protections;
- Prohibits insurers from dissuading, or attempting to dissuade, a consumer from providing truthful information, filing complaints, or cooperating with a complaint investigation;
- Provides any sale in compliance with comparable standards satisfies the requirements of the section, and provides this provision does not limit an insurer's care obligation; and
- Provides for training requirements for agents who engage in the sale of annuities;

As it relates to other insurance provisions, the bill:

- Provides it is an unfair method of trade for an agent to fail to disclose a third party that receives certain remuneration for specified marketing practices for policy of health insurance;
- Shortens the timeframe in which the hurricane deductible on an insurance policy can be applied to a claim; amends the definition of "hurricane;" and defines the term "hurricane deductible;"
- Reduces the underwriting timeframe on property insurance from nine days to 60 days;
- Provides Citizens Property Insurance Corporation ("Citizens") may cancel certain policies within 90 days or less for misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage; and
- Provides notice of claims made under s. 627.714, F.S., must be given to the insurer in accordance with the terms of the policy within three years of the date of loss.

As it relates to mortgage loan regulations, the bill:

- Expands the options of where a mortgage lender may transact business;
- Specifies a remote location must be operated under the full charge, control, and supervision of the licensee;
- Provides when a licensee may allow loan originators to work from a remote location; and
- Amends the definition of "branch office" and defines the term "remote location."

As it relates to money services businesses, the bill:

- Specifies a licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same policy coverage period; and
- Provides a person who violates this provision commits a felony of the third degree.

As it relates to crowd-funding campaigns, the bill:

- Requires organizers of crowd-funding campaigns related to disasters to take certain steps relating to collecting and retaining certain information, disclosing specified information, cooperating with law enforcement, and displaying and directing donors to certain fundraisers;
- Requires an organizer to attest to the accuracy and completeness of specified information;
- Defines several terms, including "crowd-funding campaign," "crowd-funding platform," "disaster," and "organizer."

As it relates to distributed energy generation platform, the bill:

- Adds three disclosures related to the sale or lease of a distributed energy generation system which must be separate from the agreement between the seller or lessor and buyer and lessee; and
- Requires a sale or lease agreement to include the customer contact center phone number for the Department of Business and Professional Regulation.

The bill provides motor vehicle service agreements that maintain a contractual liability insurance policy in lieu of maintaining unearned premium reserve may have a policy with certain terms.

The bill revises the definition of the term “manufacturer” for purposes of part III of ch. 634, F.S., to exclude a business that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service, and makes conforming changes to s. 634.406, F.S.

The bill creates a new third degree felony, which is punishable by a term of imprisonment not to exceed five years,¹ a fine not to exceed \$5,000,² or in the case of a habitual offender, a term of imprisonment not to exceed ten to fifteen years.³ The new third degree felony may increase state court revenues and expenditures. In addition, the bill may have an indeterminate negative state prison bed impact. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

The bill, except as otherwise provided, is effective July 1, 2023.

II. Present Situation:

Insurance

In January 2003, the Financial Services Commission (“Commission”) was created within the Department of Financial Services (Department).⁴ The Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.⁵ The Commission consists of the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR).⁶

The OIR is responsible for the regulation of activities related to insurers and other risk bearing entities, including, amongst other things, licensing, rates, policy forms market conduct, claims, issuance of certificates of authority.⁷ A person may not act, advertise, or hold himself or herself

¹ Section 775.082, F.S.

² Section 775.083, F.S.

³ Section 775.084, F.S.

⁴ Section 20.121(3), F.S.

⁵ *Id.*

⁶ Section 20.121(3)(a), F.S.

⁷ Section 20.121(3)(a), F.S.

out as an insurance agent,⁸ insurance adjuster,⁹ or customer representative unless he or she is licensed by the Department and appointed by an appropriate appointing entity or person.¹⁰ To obtain a license, such individuals must comply with certain requirements, including submit an application which contains specified information such as the applicant's name, address, and other contact information.¹¹ A licensee has an obligation to notify the Department, in writing, within 30 days after a change of name, residence address, principal business street, address, mailing address, contract telephone numbers, including a business telephone number, or e-mail address.¹² A licensee who failure to notify the Department of such change within the 30 days is subject to a fine not to exceed \$250 for a first offence and a fine of at least \$500 or suspension or revocation of certain licenses for a subsequent offense.¹³

Public Adjusters

A public adjuster is any person, except a duly licensed attorney-at-law as exempted under s. 626.860, F.S., who, for money, commission, or any other things of value, directly or indirectly prepares, completes, or files an insurance claim for an insured¹⁴ or third-party claimant, or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract, or who, advertises for employment as an adjuster of such claims.¹⁵ The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of the public adjuster, as insured, or a third-party claimant.¹⁶ The term excludes several categories of persons who do not fall within the definition, such as licensed health care providers or employees thereof who prepares or files health insurance claim forms on behalf of a patient.¹⁷

⁸ Section 626.015(3), F.S., defines "agent" as a general lines agent, life agent, health agent, or title agent, or all such agents, as indicated by context. The term "agent" includes an insurance producer or producer, but does not include a customer representative, limited customer representative, or service representative. Section 626.015(6), F.S., defines "customer representative" as an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of the agent or agency. Section 626.015(13), F.S., defines "limited customer representative" as a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency. Section 626.015(19), F.S., defines "service representative" as an individual employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and effecting insurance contracts when accompanied by a licensed general lines agent.

⁹ Section 626.015(2), F.S., defines "adjuster" as a public adjuster as defined in s. 626.854, F.S., or an all-lines adjuster as defined in s. 626.8548, F.S. which defines the term as a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, and any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

¹⁰ Section 626.112(1)(a), F.S.

¹¹ Section 626.171, F.S.

¹² Section 626.551, F.S.

¹³ *Id.*

¹⁴ Section 626.854(4), F.S., defines "insured," for purposes of this section, as only the policyholder and any beneficiaries named or similarly identified in the policy.

¹⁵ Section 626.854(1), F.S.

¹⁶ *Id.*

¹⁷ Section 626.854(2)(a), F.S.

Prohibited acts

Section 626.854, F.S., prohibits public adjusters from engaging in certain conduct, including giving legal advice or acting on behalf of any person negotiating or settling certain claims.¹⁸ An attorney who is licensed to practice law in Florida and in good standing with The Florida Bar is not required to hold a separate license under ch. 626, F.S., to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or insurance contracts.¹⁹

Public adjusters are also prohibited from directly or indirectly soliciting an insured or claimant except for during specified times.²⁰ A public adjuster or any other person who circulates or disseminates any advertisement, announcement, or statement containing any assertion, representation, or statement about the business of insurance that is untrue, deceptive, or misleading commits an unfair and deceptive insurance trade practice, and Florida law sets out specific statements which are considered deceptive or misleading.²¹

Contracts and Disclosures

All contracts for public adjuster services and proof-of-loss statements must be in writing and include a disclosure relating to injuring, defrauding, or deceiving an insurer or insured and committing a crime if proof of loss or estimate of claims is based on false, incomplete, or misleading information.²² A public adjuster contract for a property and casualty claim must contain certain information, such as the full name and certain contact details of the public adjuster and insured.²³ Such contract must state the percentage of compensation for the public adjuster's services, type of claim, and signatures of the public adjuster and named insureds.²⁴ An unaltered copy of the executed contract must be provided to the insurer within 30 days after the execution. Public adjusting firms that adjust claims primarily for commercial entities that meet certain requirements is deemed to comply with these provisions if the public adjusting firm remits to the insurer a signed affidavit that contains specified information relating to:

- The name and contact details of the public adjuster, public adjuster apprentice, and insured;
- The name of the public adjusting firm;
- An attestation the compensation will not exceed the limits provided by law; and
- The type of claim.²⁵

An insured or claimant may cancel a contract with a public adjuster without penalty within 10 days after the date on which the contract is executed.²⁶ The reason for providing the 10 day period is to allow the consumer to have time to make an informed decision in the wake of a

¹⁸ Section 626.854(3), F.S.

¹⁹ Section 626.860, F.S.

²⁰ Section 626.854(5), F.S.

²¹ Section 626.854(7), F.S. Section 626.9541, F.S., provides for unfair methods of competition and unfair or deceptive acts or practices.

²² Section 626.8796(1), F.S.; Section 626.8797, F.S.

²³ Section 626.8796(2), F.S.

²⁴ *Id.*

²⁵ Section 626.8796(2), F.S.

²⁶ Section 626.854(10), F.S.

storm.²⁷ A public adjuster's contract must contain the following statement in minimum 18-point bold type which states:

“You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to (name of public adjuster), submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract.”²⁸

A public adjuster is required to provide to the insured or claimant a written estimate of the loss to assist in any claim for insurance proceeds within 60 days after the date of the contract.²⁹

Charges, Fees, and Gifts

Florida law prohibits a public adjuster from charging a fee unless a written contract is entered into prior to the payment of the claim, and restricts certain fees and charges of a public adjuster who enter into contracts with an insured or claimant.³⁰ For instance, a public adjuster's compensation may not exceed twenty percent of the amount of insurance claim payments or settlements for claims that are not based on an emergency, and ten percent based on events that are based on an emergency.³¹ A public adjuster may not give or offer to give a client or prospective client a loan or advance, or give or offer to give any merchandise worth more than \$25 to any individual for the purpose of advertising or inducing such individual to enter into a contract.³²

Office and Records

Independent or public adjusters must maintain a place of business in Florida which is accessible to the public but may be a home office.³³ Such adjusters must keep the “usual and customary records” relating to the transactions covered under the license. Records related to a specific claim must be retained in the adjuster's place of business for not less than five years after completion of the adjustment.³⁴ An adjuster is not prohibited from returning or delivering certain documents to the insurer or insured.³⁵

²⁷ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 3 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance).

²⁸ Section 626.854(6), F.S.

²⁹ Section 626.854(14), F.S.

³⁰ Section 626.854(10), F.S.

³¹ Section 626.854(10)(b), F.S.

³² Section 626.854(8) and (9), F.S.

³³ Section 626.875(1), F.S.

³⁴ Section 626.875(2), F.S.

³⁵ *Id.*

Annuity Investments

The purpose of s. 627.4554, F.S., annuity³⁶ investments, is to set out requirements for which insurers³⁷ must comply when making recommendations³⁸ to consumers regarding annuity products, and to establish a system for supervising such recommendations to ensure consumers' insurance needs and financial objectives are met at the time of the transaction.³⁹ The section applies to any recommendation made by an insurer or agent⁴⁰ to a consumer to purchase, exchange, or replace an annuity which results in the consumer purchasing, exchanging, or replacing the recommended product.⁴¹ The section, however, does not apply to the following:

- Direct-response solicitation where there is no recommendation based on information collected from the consumer;
- Contracts used to fund:
 - An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;
 - Certain plans of the Internal Revenue Code, if established or maintained by an employer;⁴²
 - A government or church plan,⁴³ a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization;⁴⁴
 - A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - Settlements or assumptions of liabilities associated with personal injury litigation or a dispute or claim-resolution process; or
 - Formal prepaid funeral contracts.⁴⁵

When making a recommendation to purchase or exchange an annuity product which results in an insurance transaction or series of insurance transactions, the insurer or agent must have a reasonable basis to believe, based on the consumer's suitability information,⁴⁶ the

³⁶ Section 627.4554, F.S., defines "annuity" as an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

³⁷ The term "insurer" has the same meaning as provided in s. 624.03, F.S. Section 627.4554(3)(d), F.S.

³⁸ Section 627.4554(3)(e), F.S., defines "recommendation" as advice provided by an insurer or its agent to a consumer which would result in the purchase, exchange, or replacement of an annuity in accordance with that advice.

Section 627.4554(3)(f), F.S., defines "replacement" as a transaction in which a new policy or contract is to be purchased and it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be: 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated; 2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values; 3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid; 4. Reissued with a reduction in cash value; or 5. Used in a financed purchase.

³⁹ Section 627.4554(1), F.S.

⁴⁰ The term "agent" has the same meaning as provided in s. 626.015, F.S. Section 627.4554(3)(a), F.S.

⁴¹ Section 627.4554(2), F.S.

⁴² Section 627.4554(4)(b)2., F.S., specifies the plans that are exempt from this section includes s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code.

⁴³ Section 414, I.R.C.

⁴⁴ Section 457, I.R.C.

⁴⁵ Section 627.4554(4), F.S.

⁴⁶ Section 627.4554(3)(g), F.S., defines "suitability information" as information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following: 1. Age; 2. Annual income; 3. Financial situation and needs, including the financial resources used for funding the annuity;

recommendation is suitable for the consumer and a reasonable basis to believe all of the following:

- The consumer has been reasonably informed of various features of the annuity;⁴⁷
- The consumer would benefit from certain features of the annuity;⁴⁸
- The particular annuity as a whole, underlying subaccounts to which funds are allocated, riders or similar enhancements are suitable; and, in respect of exchange or replacement, the transaction as a whole is suitable for the consumer based on his or her suitability information;
- An exchange or replacement is suitable after considering whether the consumer:
 - Will incur a surrender charge, be subject to a new surrender period, lose existing benefits, be subject to increased fees;
 - Would benefit from product enhancements and improvements; and
 - Has had another annuity exchange or replacement within the preceding 36 months.⁴⁹

Before executing a transaction for an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information.⁵⁰ The information must be collected on a specified form that must be signed by the applicant and agent.⁵¹ Such form must be in at least 12-point type and be readily understandable by the agent and consumer.⁵² A true and correct copy of the executed form must be provided to the insurer by the responsible party within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract.⁵³

An insurer may not issue a recommended annuity to a consumer unless the insurer has reasonable basis to believe the annuity is suitable based on the consumer's suitability information.⁵⁴ An insurer's issuance of an annuity must be reasonable based on all of the circumstances known at the time of the issuance, but an insurer does not have an obligation to a consumer under certain provisions of the section if:

- A recommendation has not been made;
- A recommendation was made and is later found to be based on materially inaccurate information provided by the consumer;
- A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
- A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.⁵⁵

4. Financial experience; 5. Financial objective; 6. Intended use of the annuity; 7. Financial time horizon; 8. Existing assets, including investment and life insurance holdings; 9. Liquidity needs; 10. Liquid net worth; 11. Risk tolerance; and 12. Tax status.

⁴⁷ Section 627.4554(5)(a)1., F.S. provides examples such as the potential surrender period and charge, potential tax liability, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk.

⁴⁸ Section 627.4554(5)(a)2., F.S., provides examples such as tax-deferred growth, annuitization, or the death or living benefit.

⁴⁹ Section 627.4554(5)(a), F.S.

⁵⁰ Section 627.4554(5)(b), F.S.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Section 627.4554(5)(c), F.S.

⁵⁵ Section 627.4554(5)(d), F.S.

At the time of the sale, the agent and the agent's representative must:

- Make a record of any recommendation to the consumer;
- Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and
- Obtain the consumer's signed statement acknowledging an annuity transaction is not recommended, if applicable.

Before executing an exchange or a replacement of an annuity contract resulting from a recommendation, the agent must provide the consumer with a specified form which compares the difference between the existing annuity contract and the annuity contract being recommended to determine the suitability and benefits to the consumer.⁵⁶ Such form needs to be signed by the agent and the insured, and must be to the insurer within 10 days after execution of the form and to the consumer no later than the date of delivery of the contract.⁵⁷

An insurer must establish a supervision system that is reasonably designed to ensure the insurer and agent's compliance with s. 627.4554, F.S., and must include, but is not limited to:

- Maintaining reasonable procedures to inform its agents of the requirements under Florida law and incorporating them into training manuals;
- Establishing standards for agent product training;
- Providing product-specific training and training materials that explain all material features of its annuity products to its agents;
- Maintaining procedures for the review of each recommendation before issuance of an annuity to ensure there is reasonable basis for determining that the recommendation is suitable, such as review procedures;
- Maintaining reasonable procedures to detect recommendations that are not suitable, such as confirmation of consumer suitability information, systematic customer surveys, and customer interviews; and
- Annually providing a report to senior managers which details a review, along with appropriate testing to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended.⁵⁸

An insurer is not required to include in its supervision system agent recommendations to consumers of products other than annuities offered by the insurer.⁵⁹ An insurer may contract with a third-party to perform any function required with respect to the supervisory system,⁶⁰ but the insurer must include the supervision of such function as part of the procedures required to be conducted as part of the system which include, but are not limited to:

- Monitoring and, as appropriate, conducting audits to ensure the contracted function is properly performed; and

⁵⁶ Section 627.4554(5)(f), F.S.

⁵⁷ *Id.*

⁵⁸ Section 627.4554(5)(g)1., F.S.

⁵⁹ Section 627.4554(5)(g)2., F.S.

⁶⁰ Section 627.4554(5)(g)3., F.S.

- Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing the function is being properly performed.⁶¹

An insurer is responsible for taking appropriate corrective action and may be subject to penalties notwithstanding any contract for the performance of a function by a third-party and regardless of the insurer's compliance with these provisions in this paragraph regarding contracting with third-parties to perform functions.⁶²

An insurer may not dissuade, or attempt to dissuade, a consumer from:

- Truthfully responding to an insurer's request for confirmation of suitability information;
- Filing a complaint; or
- Cooperating with the investigation of a complaint.⁶³

Sales made in compliance with Financial Industry Regulatory Authority (FINRA) or a succeeding agency requirements relating to the suitability and supervision of annuity transactions satisfy the requirements of s. 627.4554, F.S. This applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales.⁶⁴ These provisions do not limit the Department's or the OIR's ability to investigate or take any enforcement actions against insurers or agents.⁶⁵ For this paragraph to apply, the insurer must:

- Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
- Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.⁶⁶

Insurers and agents are required to maintain or be able to make available to the Department or the OIR records of the information collected from the consumer with respect to an annuity insurance transaction, and other information relied upon in making the recommendation, for five years after the insurance transaction is completed.⁶⁷ An insurer may retain records on behalf of its agent.⁶⁸ Records may be maintained in various specified forms or by any process that accurately produces the actual document.⁶⁹

An insurer is responsible for compliance with s. 627.4554, F.S., and, if violated because of action or inaction by the insurer or its agent that causes harm to the consumer, the OIR may order the

⁶¹ Section 627.4554(5)(g)3., F.S.

⁶² Section 627.4554(5)(g)3.b., F.S.

⁶³ Section 627.4554(h), F.S.

⁶⁴ Section 627.4554(i), F.S.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Section 627.4554(6), F.S.

⁶⁸ *Id.*

⁶⁹ *Id.*

insurer to take reasonably appropriate corrective action and may impose appropriate sanctions and penalties.⁷⁰ The Department may order:

- An agent to take reasonably appropriate corrective action for a consumer harmed by a violation, including monetary restitution of penalties or fees incurred by the consumer and impose appropriate penalties and sanctions;
- A managing general agency or insurance agency that employs or contracts with an agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation.⁷¹

The Department must order an agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of money belonging to the consumer, and the amount may not exceed the amount misappropriated, converted, or unlawfully withheld.⁷² This provision does not limit the consumer's right to seek other remedies. To the extent that corrective action for the consumer is taken promptly after a violation is discovered, any applicable penalty under the Florida Insurance Code for a violation must be reduced or eliminated, as appropriate, according to a schedule adopted by the Department or the OIR.⁷³

In 2003, the National Association of Insurance Commissioners (NAIC) created the Suitability in Annuity Transactions Model Regulations in 2003 which were revised with updated standards in 2020 ("NAIC Model Regulation").⁷⁴ According to the NAIC, as of 2022, 27 states have adopted either the 2003 or 2020 version of the NAIC Model Regulation.⁷⁵ The NAIC Model Regulation requires agents to act in the best interest of consumers when making recommendations regarding annuities, and requires insurers to establish and maintain a system to supervise procedures to ensure compliance with the regulation.⁷⁶ It also contains, amongst other things, duties for which insurers and agents must comply, training requirements, recordkeeping, and compliance mitigation provisions.⁷⁷

⁷⁰ Section 627.4554(7)(a), F.S.

⁷¹ Section 627.4554(7)(a)1. and 2., F.S.

⁷² Section 627.4554(7)(c), F.S.

⁷³ Section 627.4554(7)(d), F.S.

⁷⁴ Zimmermann, S., *NAI Annuity Suitability Training Requirements*, Annuity.Org, Feb. 20, 2023, available at <https://www.annuity.org/annuities/regulations/naic/training/> (last visited April 13, 2023).

⁷⁵ Silvestrini, E., *Annuity Regulations*, Annuity.Org, Feb. 20, 2023, <https://www.annuity.org/annuities/regulations/> (last visited April 13, 2023).

⁷⁶ The NAIC Model Laws, Regulations, Guidelines and Other Resources – Spring 2020, *Suitability in Annuity Transactions Model Regulation*, Spring 2020, available at <https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf> (last visited April 13, 2023).

⁷⁷ *Id.*

Insurance Agency Firm Name

An insurance agency's⁷⁸ firm name must comply with certain provisions under Florida law.⁷⁹ The Department may disapprove the use of any true or fictitious name, except the bona fide natural name of an individual, by an insurance agency for any of the following reasons:

- The name interferes with or is too similar to a name already in use by another agency or insurer;
- The use of the name may mislead the public;
- The name states or implies the agency is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits insurance, or is entitled to engage in insurance activities not permitted under the license held or applied for by the licensee. This provision does not prohibit the use of the terms “state” or “states,” and use of such terms does not imply the agency is a state agency.
- The name contains the term “Medicare” or “Medicaid.” An insurance agency whose name contains such terms and is licensed as of July 1, 2021 may continue to use that name until June 30, 2023 as long as the license remains valid. Insurance agencies whose names contain such terms will automatically expire on July 1, 2023, unless the terms are removed from the name before that date.⁸⁰

Notice of Property Insurance Claim

Section 627.70132, F.S., currently requires insureds to notify an insurer of a claim or reopened claim,⁸¹ within one year after the date of loss.⁸² Notice of a supplemental claim⁸³ must be given to the insurer within 18 months after the date of loss or such claim is barred.

Residential Condominium Loss Assessments

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;

⁷⁸ Section 626.015(10), F.S., defines “insurance agency” as a business location at which an individual, firm, partnership, corporation, association, or other entity, other than an employee of the individual, firm, partnership, corporation, association, or other entity other than an insurer as defined by s. 624.03, F.S., or an adjuster, engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent.

⁷⁹ Section 626.602, F.S.

⁸⁰ *Id.*

⁸¹ Section 627.70132(1)(a), F.S., defines “reopened claim” as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

⁸² Section 627.702(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

⁸³ Section 627.70132(1)(b), F.S., defines “supplemental claim” as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.⁸⁴

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2,000 for all assessments made as a result of the same direct loss to the condominium property.⁸⁵ The law further establishes the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.⁸⁶ A condominium unit owner's insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.⁸⁷

Notice of Cancellation for Certain Policies

Insurers must inform the first-named policyholder for coverage of property, casualty (except for mortgage guaranty), surety, or marine insurance (except for certain motor vehicle insurance) with 45 days' advance written notice of cancellation or termination with when otherwise specified in certain provisions.⁸⁸ When cancellation is due to failure to pay a premium, at least 10 days' written notice of cancellation and the reason for the cancellation must be provided to the insured.⁸⁹ When cancellation or termination occurs during the first 90 days and is not a result of nonpayment of premium, at least 20 days' written notice and the reason for cancellation or termination must be given to the insured except where there has been a material misstatement, misrepresentation, or failure to comply with the underwriting requirements.⁹⁰ After 90 days, no such policy may be cancelled by the insurer unless there has been a material misstatement, a failure to pay the premium, a failure to comply with underwriting requirement within a specified time, or a substantial change in the risk covered by the policy or when cancellation is given for a class of insureds.⁹¹

With respect to personal lines or commercial residential property insurance policies, such as any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, apartment building, the insurer must give the first-named insured written notice at least 120 days before the effective date of the nonrenewal, cancellation, or termination.⁹² Such insurers must receive 10 days' advance notice of cancellation for a failure to pay a premium, or 20 days' notice for a reason other than nonpayment if cancellation occurs within the first 90 days of coverage.⁹³ An insurer may not cancel the policy after it has been in effect for 90 days unless there has been a material misstatement, nonpayment, a failure to comply within underwriting

⁸⁴ Araujo, Mila, *The Balance, Loss Assessment Explained for Condo Insurance*, <https://www.thebalancemoney.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited March 9, 2023).

⁸⁵ Section 627.714(1), F.S.

⁸⁶ Section 627.714(2), F.S.

⁸⁷ Section 627.714(4), F.S.

⁸⁸ Section 627.4133(1)(a), F.S.

⁸⁹ Section 627.4133(1)(b)1., F.S.

⁹⁰ Section 627.4133(1)(b)2., F.S.

⁹¹ *Id.*

⁹² Section 627.4133(2)(b), F.S.

⁹³ Section 627.4133(2)(b)1. and 2., F.S.

within a specified time, a substantial change in the risk covered by the policy or unless the cancellation is for a given class of insureds.⁹⁴

Unfair Methods of Competition and Unfair or Deceptive Acts

The Unfair Insurance Trade Practices Act⁹⁵ provides no person may engage in any unfair method of competition or an unfair or deceptive act or practice in relation to the business of insurance.⁹⁶ Section 626.9541, F.S., sets out several acts or practices that constitute unfair methods of competition and unfair or deceptive acts, such as:

- Misrepresentations and false advertising of insurance policies;
- False information and advertising;
- Defamation;
- Boycott, Coercion, and intimidation;
- False statements and entries;
- Unfair discrimination;
- Unlawful rebates; and
- Unfair claim settlement practices.

Misrepresentations and false advertising of insurance policies means knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, comparison, or property and casualty certificate of insurance altered after being issued, which, for instance, misrepresents the benefits, advantages, conditions, or terms of any insurance policy or is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.⁹⁷

Except for specified penalties to the contrary and subject to any other applicable penalties, a person who violates any provision of the Unfair Insurance Trade Practices Act may be fined an amount not greater than \$5,000 for each non-willful violation and not greater than \$40,000 for each willful violation.⁹⁸ An insurer may not be fined more than an aggregate amount of \$20,000 for all non-willful violations, or \$200,000 for all willful violations, arising out of the same action.⁹⁹

Hurricane Deductibles

Residential coverage includes both personal lines residential coverage¹⁰⁰ and commercial lines residential coverage,¹⁰¹ and includes policies that provide coverage for particular perils such as

⁹⁴ Section 627.4133(2)(b)3., F.S.

⁹⁵ Section 626.951(2), F.S.

⁹⁶ Section 626.9521(1), F.S.

⁹⁷ Section 626.9541(1)(a), F.S.

⁹⁸ Section 626.9521(2), F.S.

⁹⁹ *Id.*

¹⁰⁰ Types of personal lines residential coverage include homeowner, mobile home owner, dwelling, tenant, condominium unit owner, or cooperative unit owner. Section 627.4025(1), F.S.

¹⁰¹ Types of commercial lines residential coverage includes condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners association. Section 627.4025(1), F.S.

windstorm¹⁰² and hurricane.¹⁰³ “Hurricane coverage” is the loss or damage caused by the peril of windstorm during a hurricane, which includes damage to the interior of a building or to property inside a building caused by rain, snow, sleet, hail, sand, or dust if the direct force of a windstorm first damages the building, causing an opening through which rain, snow, sleet, hail, sand, or dust enters and causes damage.¹⁰⁴ The term “hurricane,” as used in this paragraph, is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

- Beginning at the time a hurricane watch or hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service;
- Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and
- Ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.¹⁰⁵

According to the Insurance Services Office, there has been \$159.1 billion in insured losses caused by hurricanes between 1993 and 2013.¹⁰⁶ In 1992, after Hurricane Andrew hit South Florida, hurricane deductibles were introduced to deal with the major losses caused by the major storms.¹⁰⁷ Florida law does not define “hurricane deductible,” but according to the NAIC, a deductible is the amount of loss for which the policyholder is responsible to pay before any loss is covered by the insurer.¹⁰⁸ Hurricane deductibles may be a fixed amount but usually are a percentage of the insured’s home value.¹⁰⁹ Hurricane deductibles are usually higher than other peril deductibles because of the catastrophic damage caused by hurricanes,¹¹⁰ and typically range from between one percent to 10 percent of the home value.¹¹¹ Laws in nineteen states, including Florida, and the District of Columbia contain to some form of hurricane or storm deductible.¹¹²

¹⁰² Section 627.4025(2)(b), F.S., defines “windstorm,” for purposes of defining the term “hurricane coverage,” means wind, wind gusts, hail, rain, tornadoes, or cyclones caused by or resulting from a hurricane which results in direct physical loss or damage to property.

¹⁰³ Section 627.4025(1), F.S.

¹⁰⁴ Section 627.4025(2)(a), F.S.

¹⁰⁵ Section 627.4025(2)(c), F.S.

¹⁰⁶ The National Association of Insurance Commissioners (NAIC), *Hurricane Deductibles*, May 11, 2022, available at <https://content.naic.org/cipr-topics/hurricane-deductibles> (hereinafter cited as “NAIC Hurricane Deductible”) (last visited April 14, 2023).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ The NAIC Hurricane Deductible.

¹¹⁰ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 3 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance); The NAIC Hurricane Deductible.

¹¹¹ The NAIC Hurricane Deductible.

¹¹² *Id.*; Howard, P., and Gimbel, J., *Hurricane Deductibles in 2023: Your State-by-State Guide*, Policygenius, Dec. 30, 2022, available at <https://www.policygenius.com/homeowners-insurance/hurricane-deductible-guide/> (last visited April 14, 2023) (summarizing the laws on hurricane deductibles in 19 states).

Motor Vehicle Service Agreements

A person may not transact, administer, market, or attempt any of these activities with respect to a service agreement¹¹³ business in Florida without a license.¹¹⁴ To qualify for and maintain a license, a service agreement company (“company”) must comply with applicable Florida laws (including the Florida Insurance Code), rules and charter powers, and comply with specified requirements, including, in part:

- Being a solvent corporation;
- Furnishing the OIR with evidence the management of the company is competent and trustworthy, and can successfully and lawfully manage its affairs;
- Making a deposit required under s. 634.052, F.S.;
- Maintaining the required reserves and the required ratio of liquid assets to the required reserves;
- Having and maintaining net assets of \$500,000; and
- Establishing and maintaining an unearned premium reserve that meets certain requirements, including:
 - The unearned premium reserve consists of unencumbered assets equal to a minimum of 50 percent of the unearned gross written premium of each service agreement and must amortize this reserve pro rata over the duration of the service agreement;
 - A company utilizing the 50-percent reserve must not allow its ratio of gross written premium to net assets to exceed 10 to one; and
 - The company must deposit with the DFS securities of the type eligible for deposit by insurers under s. 625.52, F.S., equal to 15 percent of the unearned premium reserve; or
- Does not establish and maintain an unearned premium reserve if the company secures and maintains contractual liability insurance in accordance with the following:
 - Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the OIR which meets certain criteria;
 - The contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds if the company does not meet its contractual obligations;
 - If the issuer of the contractual liability policy is fulfilling the service agreements covered by contractual liability policy and the holder cancels the service agreement, the issuer must make a full refund of the unearned premium to the consumer in certain circumstances;
 - The policy’s cancellation, termination, or nonrenewal is subject to 90 days written notice by the insurer to the OIR; and

¹¹³ Section 634.011(8), F.S., defines “motor vehicle service agreement” or “service agreement” as a contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125, F.S., are expressly excluded from this definition and are exempt from the provisions of this part. The term “motor vehicle service agreement” includes any contract or agreement that provides: (a) for the coverage or protection and which is issued or provided in conjunction with an additive produce applied to the motor vehicle that is the subject of such contract or agreement; (b) For payment of vehicle protection expenses as defined in s. 634.011(8)(b)1.a., F.S.

¹¹⁴ Section 634.031(1), F.S.

- The company must provide the OIR with the claims statistics.¹¹⁵

Mortgage Loan Regulations

The OFR is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and securities.¹¹⁶ The OFR has a Division of Consumer Finance which is responsible for the administration and enforcement of ch. 494, F.S.¹¹⁷ that licenses and regulates the individuals and businesses in the mortgage business, including loan originators,¹¹⁸ mortgage brokers,¹¹⁹ and mortgage lenders.¹²⁰ A person who acts in any of these capacities must be licensed.¹²¹

A mortgage broker and mortgage lender who makes loans in Florida must transact business from a principal place of business.¹²² Mortgage brokers and mortgage lenders may separately license branch offices.¹²³ A “branch office” is a location, other than a mortgage broker’s or mortgage lender’s principal place of business:

- The address of which appears on business cards, stationary, or advertising used by the licensee in connection with business conducted under ch. 494, F.S.;
- At which the licensee’s name, advertising or promotional materials, or signage suggests that mortgage loans are originated, negotiated, funded, or services; or
- At which mortgage loans are originated, negotiated, funded, or services by a licensee.¹²⁴

The OFR must issue a branch office license after determining that the mortgage broker or mortgage lender has submitted a completed branch office application form, which must contain specified information, and an initial nonrefundable fee of \$225.¹²⁵ Branch office licenses must be renewed at the same time as mortgage broker or mortgage lender licenses.¹²⁶ Each branch office must be operated by the “full charge, control, and supervision” of a principal loan originator and

¹¹⁵ Section 634.041, F.S.

¹¹⁶ Section 20.121(3)(a)2., F.S.

¹¹⁷ Section 494.0011(1), F.S.

¹¹⁸ Section 494.001(18), F.S., defines “loan originator” as an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts, or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

¹¹⁹ Section 494.001(23), F.S. defines “mortgage broker” as a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.

¹²⁰ Section 494.001(24), F.S., defines “mortgage lender” as a person making a mortgage loan or servicing mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. A mortgage lender may act as a mortgage broker. Section 494.0073, F.S.

¹²¹ Sections 494.00312, 494.00321, and 494.00611, F.S.

¹²² Sections 494.0039 and 494.0067(1), F.S. Section 494.001(31), F.S., defines “principal place of business” as a mortgage’s broker’s or mortgage lender’s primary business office, the street address, or physical location that is designated on the application for licensure or any amendment to such application.

¹²³ Sections 494.0036(1) and 494.0066(1), F.S.

¹²⁴ Section 494.001(3), F.S.

¹²⁵ Sections 494.0036(2) and 494.0066(2), F.S.

¹²⁶ Section 494.0036(3) and 494.0066(3), F.S.

branch manager.¹²⁷ Operating a branch office without the required license, designated principal loan originator, or branch manager is grounds for disciplinary action.¹²⁸

Licenses are required to maintain books, accounts, records and documents necessary to determine compliance with ch. 494, F.S., at their principal place of business,¹²⁹ but the OFR may authorize a licensee to maintain such records at an alternative location.¹³⁰

Conduct of Money Services Businesses

Ch. 560, F.S., sets out provisions on the conduct of money services businesses (MSB), specifying, in part:

- A licensee may transact MSB only under the legal name under which the person is licensed;
- The payment instrument must be endorsed using the legal name under which the licensee is licensed in certain circumstances;
- A licensee may not accept or cash a payment instrument from a person who is not the original payee with limited exception; and
- A licensee must report all suspicious activity to the OIR.¹³¹

Pursuant to s. 560.310, F.S., the OIR must require a licensee to submit certain information to the check cashing database or electronic log, before entering into each check cashing transaction for each payment instrument being cashed.¹³² A person who knowingly violates this section commits a felony of the third degree.¹³³

Crowd-funding Campaigns

Crowd-funding is a recent method used to raise funds online from a large number of people who are interested in a campaign.¹³⁴ Campaigns may support a wide range of ideas and ventures, and usually share information about the project, cause, or idea to decide whether to invest in the campaign based on the “collective wisdom of the crowd.”¹³⁵ Some of the top crowd-funding sites include GoFundMe, StartEngine, Indiegogo, and SeedInvest Technology.¹³⁶

Florida statutes have limited provisions related to crowd-funding campaigns that relate to intrastate crowd-funding for securities transactions.¹³⁷ There are no other provisions that address

¹²⁷ Sections 494.0035 and 494.00665, F.S.

¹²⁸ Section 494.00255(1)(q) and (r), F.S.

¹²⁹ Section 494.0016(1), F.S.

¹³⁰ Section 494.0016(2), F.S.

¹³¹ Section 560.309, F.S.

¹³² Section 560.310(2)(d), F.S.

¹³³ Section 560.111(6), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹³⁴ The Securities and Exchange Commission, *24D Securities Pub. & Priv. Offerings Appendix C13 (2d ed.)* (Nov. 2022) available at [Appendix C13. SEC Crowdfunding Rule | Secondary Sources | National | Westlaw Edge](#) (last visited March 18, 2023).

¹³⁵ *Id.*

¹³⁶ Kearn, M., *Crowdfunding Platforms*, Investopedia, Dec. 28, 2022, <https://www.investopedia.com/best-crowdfunding-platforms-5079933> (last visited April 14, 2023).

¹³⁷ Section 517.0611, F.S.

crowd-funding explicitly, but crowd-funding campaigns must comply with all other relevant laws, such as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).¹³⁸ For instance, it is unlawful to engage in any unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹³⁹ Three are also provisions on unlawful acts and practices by social media platforms which, if applicable, a crowd-funding campaign organizer would need to comply.¹⁴⁰

The state attorney in the judicial circuit which a violation occurs or affects, or the Department of Legal Affairs if a violation occurs or affects more than one judicial circuit,¹⁴¹ has authority to conduct investigations if certain conditions are met.¹⁴² Such authority may seek specified remedies, such as a declaratory judgment or an action to enjoin,¹⁴³ and a violator may be liable for a civil penalty of not more than \$10,000.¹⁴⁴ Further, an aggrieved party may bring an individual cause of action in certain circumstances and seek actual damages, plus attorney fees and court costs.¹⁴⁵

Distributed Energy Generation Systems

A distributed energy generation system (DEGS), such as a solar panel or a wind-turbine,¹⁴⁶ is a device or system that is used to generate or store electricity, that has an electric delivery capacity, individually or in connection with other similar devices or systems, of greater than one kilowatt or one kilowatt-hour; and that is used primarily for on-site consumption.¹⁴⁷ According to the United States Environmental Protection Agency (EPA), the use of DEGS has increased for several reasons, for instance because they have become cost-effective.¹⁴⁸ There are benefits to using DEGS, such as reducing the amount of electricity generated which can reduce the environmental impact, but it can also have negative impacts, such as a system that involves combustion.¹⁴⁹ Most solar installations on residences are installed on a roof, and DEGS may be best suited for new roofs as they can last up to 25 years or longer.¹⁵⁰

¹³⁸ Sections 501.201, F.S. to 501.213, F.S.

¹³⁹ Section 501.204(1), F.S. “Trade or commerce” is defined as the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The terms includes the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. Section 501.203(8), F.S. “Thing of value” may include, without limitation, any moneys, donation, membership, credential, certificate, prize, award, benefit, license, interest, professional opportunity, or chance of winning. Section 501.203(9), F.S.

¹⁴⁰ Section 501.2041, F.S.

¹⁴¹ Section 501.203(2), F.S.

¹⁴² Section 501.206, F.S.

¹⁴³ Section 501.207(1), F.S.

¹⁴⁴ Section 501.2075, F.S.

¹⁴⁵ Section 501.211(1), F.S.

¹⁴⁶ United States Environmental Protection Agency, *Distributed Generation of Electricity and its Environmental Impacts*, <https://www.epa.gov/energy/distributed-generation-electricity-and-its-environmental-impacts> (last visited April 14, 2023) (hereinafter cited as “EPA Website”).

¹⁴⁷ Section 520.20(3), F.S.

¹⁴⁸ EPA Website.

¹⁴⁹ *Id.*

¹⁵⁰ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 3 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance).

In 2017, the Florida Legislature adopted laws related to the retail installment sales of DEGS in Part II of ch. 520, F.S. (Part II)¹⁵¹ Part II applies to agreements¹⁵² to sell or lease a DEGS and is supplemental to the provisions on retail installment contracts contained in Part III, F.S.,¹⁵³ and any sale of a DEGS must comply with applicable safety standards under chs. 489 and 553, F.S.¹⁵⁴ A written statement, separate from the agreement, must be acknowledged by the buyer or lessee, and must meet certain minimum requirements and must contain specified information, including, in part:

- The name and certain contact details of the buyer, the person responsible for installing the DEGS, and the DEGS's maintenance providers;
- A statement indicating whether the DEGS is being purchased or leased;
- The total cost to be paid by the buyer or lease;
- A payment schedule;
- Each state or federal tax incentive or rebate relied upon by the seller;
- A description of any roof warranties;
- A disclosure notifying the lessee whether the seller will insure a leased DEGS against damage or loss; and
- A prescribed statement about the buyer's or lessee's responsibility to obtain insurance.¹⁵⁵

This requirement to produce a written statement may be satisfied by the electronic delivery of a document that contains the requirement information provided the intended recipient acknowledges its receipt.¹⁵⁶ A seller who willfully violates the Part II commits a noncriminal violation punishable by a fine.¹⁵⁷ The owner may recover against certain person specified charges under the agreement, attorney fees and costs.¹⁵⁸

Warranty Associations

Chapter 634, F.S., provides for the regulation of warranty associations. There are three parts to the chapter; Part I for motor vehicle service agreement companies; Part II for home warranty associations; and Part III for service warranty associations.

¹⁵¹ Ch. 2017-118, Laws of Fla.

¹⁵² Section 520.20(1), F.S. defines "agreement" as a contract executed between a buyer or lessee and a seller that leases or sells a DEGS. For purposes of this part, the term includes retail installment contracts. Section 520.20(2), F.S., defines "buyer" as a person that enters into an agreement to buy a DEGS from a seller. Section 520.20(6), F.S., defines "seller" as a person who regularly engaged in, and whose business substantially consists of, selling or leasing goods, including DEGS, to buyers or lessees. A seller that is also an installer must be licensed under ch. 489, F.S. Section 520.20(5), F.S., defines "retail installment contract" as an agreement executed in this state between a buyer and a seller in which the title to, or a lien upon, a DEGS is retained or taken by the seller from the buyer as security, in whole or in part, for the buyer's obligations to make specified payments over time.

¹⁵³ Section 520.21, F.S.

¹⁵⁴ Section 520.22, F.S.

¹⁵⁵ Section 520.23, F.S.

¹⁵⁶ *Id.*

¹⁵⁷ Section 520.25(1), F.S.

¹⁵⁸ Section 520.25(2), F.S.

Service Warranty Associations

A service warranty association is any business other than an authorized insurer that issues service warranties.¹⁵⁹ A service warranty includes, in return for the payment of a segregated charge by the consumer, any warranty, guaranty, or maintenance service contract equal to or greater than one year in length; an agreement for a specific duration to perform the repair, replacement, or maintenance of a consumer product; for indemnification for repair, replacement, or maintenance, for failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling.¹⁶⁰ The regulation of the association and the warranties is administered by the OIR; the regulation of the sales representatives is by the DFS.¹⁶¹

III. Effect of Proposed Changes:

Public Adjusters

Section 9 amends s. 626.854, F.S., by revising the definition of public adjuster to apply to any person who acts as a public adjuster regardless of how that person described or presents his or her services. When entering into a contract after July 1, 2023, a public adjuster is prohibited from:

- Collecting a fee for services on payments made to the insured unless the public adjuster and the named insured or the named insured's legal representative have entered into a written contract; and
- Contracting with a third party on behalf of the named insured unless the named insured gives written consent to procure these services and he or she gives such consent after entering into a contract for public adjusting services. If a public adjuster contracts with a third party to assist in settling the claim before obtaining written consent from the insured, the public adjuster is responsible for the third-party's fees.

If a public adjuster represents anyone other than the named insured in a claim, the public adjuster fees must be paid by the third party and may not be charged back to the named insured.

Public Adjuster Compensation

- A public adjuster may not charge more than: One percent of the amount of insurance claim payments or settlements paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days from the date of the reported loss or 10 days after the date on which the public adjusting contract is executed, whichever is later; and
- Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay occurs before the date on which the public adjusting contract is executed.

¹⁵⁹ Section 634.401(14), F.S.

¹⁶⁰ Section 634.401(13), F.S.

¹⁶¹ Section 634.402, F.S.

Right of Rescission

When an insured or claimant enters into a contract with a public adjuster as a result of an emergency, an insured or claimant may cancel the contract without penalty or obligation within 30 days after the date of the loss, or 10 days after the date on which the contract is executed, whichever is longer. The public adjuster's contract to adjust must contain the following language in a minimum 18-point bold type immediately before the space reserved in the contract for the signature of the insured or claimant:

“You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract. If this contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, you may cancel this contract for any reason without penalty or obligation to you within 30 days after the date of the event or 10 days after the date on which the contract is executed, whichever is longer. You may also cancel the contract without penalty or obligation to you if I, as your public adjuster, fail to provide you and your insurer a copy of the written estimate within 60 days of the execution of the contract, unless the failure to provide the estimate within 60 days is caused by factors beyond my control, in accordance with s. 626.854(14)(b), Florida Statutes. The 60-day cancellation period for failure to provide a written estimate shall cease on the date I have provided you with the written estimate.”

The insured may cancel a public adjuster services contract with no additional penalties or fees charged by the public adjuster if the public adjuster has not provided the insurer with a written estimate within 60 days after executing the contract, unless the failure to provide the estimate within 60 days is caused by factors beyond the control of the public adjuster. The cancellation period must cease on the date the public adjuster provides the written estimate to the insured.

Sections 11 and 12 amend ss. 626.8796 and 626.8797, F.S., respectively, and provides the fraud statement that must be contained in the contract and proof-of-loss statement must be in a minimum 18-point bold type before the space in the contract reserved for the insured's signature.

Public Adjuster Contracts

Section 11 amends s. 626.8796, F.S., and provides all contracts for public adjuster services must be in at least 12-point font, and be titled “Public Adjuster Contract.” The provision on public adjuster contracts relating to property and casualty claims must include the public adjuster's and insured's phone number and e-mail addresses, and requires these details for the affidavit remitted by public adjusting firms in eligible circumstances. The bill specifies contract language must state the percentage of compensation in a minimum of 18-point bold type before the space reserved for the insured's signature. The bill provides the insured is required to initial each page that does not have his or her signature. Further, the bill specifies the unaltered copy of the contract must be remitted to the insured at the time of execution and to the insurer within seven, rather than 30, days after execution, and clarifies that the unaltered copy may be provided to the insurer's representative.

The bill provides the public adjuster may not receive compensation for services provided prior to the date the insured receives unaltered copies of the executed contract or the date the executed contract is submitted to the insurer. Proof of receipt by the insured and proof of submission must be retained by the public adjuster for not less than five years.

Furthermore, an insured may rescind the contract for public adjuster services if the public adjuster has not submitted a written estimate to the insurer within 60 day after executing the contract, unless the failure is caused by factors beyond the public adjuster's control. The cancellation period for failure to provide a written estimate terminates on the date the estimate is provided.

Prior to executing the contract, the public adjuster must provide the insured with a separate disclosure document on a form adopted by the Department regarding the claim process and must:

- Define the type of adjusters who may be involved in the claim process as either a company adjuster, independent adjuster, and public adjuster;
- Explain the public adjuster is not a representative or employee of the insurer;
- Explain the insured is not required to hire a public adjuster, but has a right to do so;
- Explain an insured has a right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the insured's claim;
- Explain the public adjuster's salary, fee, commission, or other consideration to be paid is the insured's responsibility;
- Explain the public adjuster is required to provide the insured an unaltered copy of the executed contract at the time of execution;
- Explain if the contract was entered into based on events subject to a declaration of a state of emergency, the insured has a right to rescind the contract within 30 days after the date of the loss, or 10 days after the date on which the contract is executed, whichever is longer; and
- The public adjuster must provide an unaltered copy of the executed disclosure document at the time of execution.

A contract that does not comply with these disclosure requirements is invalid and unenforceable.

Rulemaking

Section 11 also provides the Department with authority to adopt rules to implement s. 626.8796, F.S., including rules to adopt forms required under the section.

Exemption from Public Adjuster Licensure

Section 9 amends s. 626.860, F.S., to clarify that the exemption for attorneys from needing a license under ch. 626, F.S., to adjust claims does not apply to the employees, interns, volunteers, or contractors of any attorney or law firm.

Display of Adjuster License

Section 10 amends s. 626.875, F.S., and requires an independent or public adjuster to display their license in a conspicuous place in the license holder's principal place of business, but carry

the license in his or her actual possession if the licensee is conducting business away from their place of business and cannot post the license.

Adjuster Records Retention

The bill requires records of specific claims or losses, that are required to be retained by the adjuster, must be retained in the adjuster's place of business for a period of not less than five years and must be made available for inspection by the Department between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays. The bill further specifies documents which must be maintained for a period not less than five years, including:

- Name, address, telephone number, and e-mail address of the insured, and the name of the attorney representing the insured, if applicable;
- The date, location, and amount of the loss;
- An unaltered copy of the executed disclosure document required and public adjuster contract;
- A copy of the estimate of damages provided to the insurer;
- The name of the insurer, the name of the insurer's claims representative, and the amount, expiration date, and number of each policy under which the loss is covered;
- An itemized statement of recoveries by the insured from the sources known to the adjuster;
- An itemized statement of the compensation received by the public adjuster from any source; and
- A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfers, and disbursements in connection with the loss.

Annuities

Section 16 amends s. 627.4554, F.S., and largely adopts the National Association of Insurance Commissioners (NAIC) Model Regulation with some modifications to synthesize the provisions with current law. The Department and Financial Services Commission (Commission) is authorized to adopt by rule the forms prescribed in the NAIC Suitability in Annuity Transaction Model Regulation Appendix A – Insurance Agent (Producer), Appendix B – Consumer Refusal to Provide Information, and Appendix C – Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

The bill renames the title of s. 627.4554, F.S., to “Suitability in Annuity Transactions,” and makes the section effective January 1, 2024. The bill amends the purpose of s. 627.4554(1), F.S., which, unlike current law, requires agents to act in the best interest of the consumer when making a recommendation about an annuity. The purpose also requires insurers to establish and maintain a supervisory system to ensure that the insurance needs and financial objectives of the consumer are effectively, rather than appropriately, addressed at the time of the transaction. The scope of the section is also amended to apply to any sale or recommendation of an annuity but is no longer limited to apply to transactions which result in the purchase, exchange or replacement recommended. The bill modifies the exemptions provision under current law to state the exemptions do not apply to s. 627.4554, F.S., “unless otherwise specifically included.”

The bill defines, deletes or revises the following terms:

- “Agent” is revised, from the same meaning as provided in s. 626.015, F.S., to mean a person or entity required to be licensed under the laws of Florida to sell, solicit, or negotiate insurance, including annuities. For purposes of this section, the terms include an insurer where no agent is involved;
- “Cash compensation” means as any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer, intermediary, or directly from the consumer in connection with the recommendation or sale of an annuity;
- “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs, and financial objectives, including, at a minimum, the following:
 - Age;
 - Annual income;
 - Financial situation and needs, including debts and other obligations;
 - Financial experience;
 - Insurance needs;
 - Financial objectives;
 - Intended use of the annuity;
 - Financial time horizon;
 - Existing assets or financial products, including investment, annuity, and insurance holdings;
 - Liquidity needs;
 - Liquid net worth;
 - Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity;
 - Financial resources used to fund the annuity; and
 - Tax status.
- “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by agents;
- “Material conflict of interest” means a financial interest of the agent in the sale of an annuity which a reasonable person would expect to influence the impartiality of a recommendation. The term expressly does not include cash compensation or noncash compensation;
- “Noncash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits;
- “Nonguaranteed elements” means the premiums; credited interest rates, including any bonus; benefits; values; dividends; noninterest-based credits; charges; or elements of formulas used to determine any of these, which are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation;
- “Recommendation” is revised to mean advice provided by an agent to an individual consumer which was intended to result or does result in a purchase, an exchange, or a replacement of an annuity in accordance with that advice. New language was added to specify the term does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material;

- “Replacement” is revised to mean a transaction in which a new annuity is to be purchased and it is known or should be known to the proposing agent, or to the proposing insurer whether or not an agent is involved, that by reason of such transaction an existing annuity or other insurance policy has been or is to be any of the criteria contained in the subsection (l)1- 5 of the bill;
- “SEC” means the United States Securities and Exchange Commission;
- “Suitability information” is deleted and replaced with the definition of “consumer profile information”;
- “Comparable standard” means, for purposes of paragraph 4.a., with respect to:
 - Broker-dealers and registered representatives of broker-dealers, applicable Securities and Exchange Commission and FINRA rules pertaining to best interest obligations and supervision of rules pertaining to best interest obligations and supervision of annuity recommendations and sales including, but not limited to, Regulation Best Interest, 17 C.F.R. s. 240.15101, and any amendments or successor regulations thereto;
 - Investment advisers registered under federal or state securities laws or investment adviser representatives by contract or under the Investment Advisers Act 1940 or applicable state securities laws, including, but not limited to, Form ADV and interpretations; and
 - Plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 of the Internal Revenue Code and any amendments or successor statutes thereto; and
- “Financial professional” means, for purposes of paragraph 4.a., an agent that is regulated and acting as: (a) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer; (b) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or (c) A plan fiduciary under s. 3(21) of the Employee Retirement Income Security Act of 1974 or fiduciary under s. 4975(e)(3) of the Internal Revenue Code or any amendments or successor statutes thereto.

The bill replaces, or amends as specified below, the duties of insurers and agents under current law to incorporate the best interest standards contained in the NAIC Model Regulation:

- When making a recommendation of an annuity, an agent must act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the insurer or agent’s financial interest ahead of the consumers’ interests.
- Provides an agent has acted in the best interest of the consumer if the agent has satisfied the following obligations regarding care, disclosure, conflicts of interest, and documentation.
- In making a recommendation, the agent must exercise reasonable diligence, care, and skill (“care obligation”) to:
 - Know the customer’s financial situation, insurance needs, and financial objectives;
 - Understand the available options after making a reasonable inquiry into options available to the agent;
 - Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs, and financial objectives over the life of the product, in light of the consumer’s profile information; and
 - Communicate the reason or reasons for the recommendation.
- The requirements of the care obligation include:

- Making reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity;
- Requiring an agent to consider the types of products the agent is authorized and licensed to recommend or sell which address the consumer's financial situation, insurance needs, and financial objectives. An insurer or agent are not required to analyze or consider products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents must be held to standards applicable to agents with similar authority and license; and
- Having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization,¹⁶² death or living benefit, or other insurance-related features.
- The care obligation does not create a fiduciary duty or relationship and only establishes a regulatory duty.
- Consumer profile information, characteristics of the insurer and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives but the level of importance of each factor under the care obligation may vary depending on the factors and circumstances of a particular case. However, each factor may not be considered in isolation.
- The requirements of the care obligation apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.
- The care obligation does not require that the annuity with the lowest one-time occurrence compensation structure or multiple occurrence compensation structure must necessarily be recommended.
- The agent does not have ongoing monitoring obligations under the care obligation, although such obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and agent.
- In a case of an exchange or replacement of an annuity, the agent must consider the whole transaction, which includes considering whether:
 - The consumer will incur a surrender charge, be subject to a new surrender period, lose existing benefits, be subject to increased fees;
 - Would benefit from product enhancements and improvements; and
 - Has had another annuity exchange or replacement within the preceding 60 months.
- An agent is not required to obtain any license other than an agent license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including, but not limited to, any securities license, in order to fulfill the duties and obligations contained in this section; provided, the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.
- Before the recommendation or sale of an annuity, the agent must prominently disclose to the consumer on a form substantially similar to that posted on the OIR's website as Appendix A, relating to an insurance agent disclosure for annuities, including:
 - A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction;

¹⁶² Annuitization is the process of converting investment into a series of periodic income payments. Investopedia.com, *Annuitization Definition*, <https://www.investopedia.com/terms/a/annuitization.asp> (last visited April 14, 2023).

- An affirmative statement on whether the agent is licensed and authorized to sell the certain products, including certain types of annuities, life insurance, mutual funds, stocks and bonds, or certificates of deposits;
- An affirmative statement describing the insurers for which the agent is authorized, contracted, or appointed, or otherwise able to sell insurance products, using the following descriptions specified descriptions regarding the number of insurers and, if two or more, whether the agent is primarily contracted with one insurer;
- A description of the sources and types of cash compensation and noncash compensation to be received by the agent, including certain information about the type of compensation received for the sale of a recommended annuity; and
- A notice of the consumer's right to request additional information regarding cash compensation.
- Upon request of the consumer or the consumer's designated representative, the agent must disclose:
 - A reasonable estimate of the amount, stated as a range of amounts or percentages, of cash compensation to be received by the agent.
 - Whether the cash compensation is a one-time or multiple occurrence amount; if a multiple occurrence amount then the disclosure must contain certain information.
- Before or at the time of the recommendation or sale of an annuity, the agent must have a reasonable basis to believe the consumer has been informed, rather than the consumer being reasonably informed under current law, of various features of the annuity, and additional features have been added to the specified list, including any annual fees, other options of the annuity, and potential changes in nonguaranteed elements of the annuity.
- The agent must identify and avoid, or reasonably manage and disclose, material conflicts of interest, including material conflicts of interest related to an ownership interest.
- An agent must at the time of the recommendation or sale:
 - Make a written record of any recommendation and the basis for the recommendation;
 - Obtain a consumer signed statement on a form substantially similar to that posted on the OIR's website as Appendix B, related to a consumer's refusal to provide information:
 - A customer's refusal to provide the consumer profile information, if any; or
 - A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.
 - Obtain a customer signed on a form substantially similar to that posted on the OIR's website as Appendix C, related to a consumer's decision to purchase an annuity not based on a recommendation, acknowledging the annuity transaction is not recommended, if applicable.
- Any requirement applicable to an agent under this subsection must apply to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had direct contact with the consumer. Certain activities, such as providing or delivering marketing or educational materials, are specified as not constituting material control or influence.
- The first sentence of s. 627.4554(5)(d), F.S., relating to the requirement that an insurer's issuance of an annuity being reasonable in all of the circumstances, is relocated to a separate subparagraph, and clarifies that an insurer to does have a care obligation with respect to specified transactions.

- An insurer is prohibited from recommending an annuity to a consumer unless there is reasonable basis to believe that it would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's profile information.
- An insurer must establish and maintain, not only establish as provided under current law, a supervision system that is reasonably designed to ensure the insurer and agent's compliance with s. 627.4554, F.S., and must include, but is not limited to, the insurer must:
 - Establish and maintain, not only maintain as provided under current law, reasonable procedures to inform its agents of the requirements of the section and incorporating them into training manuals;
 - Establish and maintain, not only establish as provided under current law, standards for agent product training, and establish and maintain reasonable procedures to require its agent to comply with the training requirements;
 - Provide product-specific training and training materials that explain all material features of its annuity products to its agents;
 - Establish and maintain, not only maintain as provided under current law, procedures for the review of each recommendation before issuance of an annuity to ensure there is reasonable basis to determine the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives, rather than for determining that the recommendation is suitable;
 - Establish and maintain, not only maintain as provided under current law, reasonable procedures to detect recommendations that are not in compliance with paragraphs (a), (b), (d), and (e), rather than detecting recommendations that are not suitable. Two examples of procedures are added to the list in current law which are: agent interviews and agent statements or attestations;
 - Annually providing a report to senior managers which details a review, along with appropriate testing to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended;
 - Establish and maintain reasonable procedures to assess, prior to the issuance or delivery of the annuity, whether an agent has provided the consumer with required information, which is not a requirement under current law;
 - Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information, which is not a requirement under current law; and
 - Establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, and other noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements under this provision do not prohibit the receipt of health insurance, office rents, office support and other employee benefits by employees as long as they are not based on the volume of sales of a specific annuity within a limited period of time.
- Amends the list of requirements that do not need to be included in an insurer's supervision system to add consideration of or comparison to options available to the agents or compensation relating to those options other than annuities or other products offered by the insurer.
- Provides an insurer may contract for the maintenance of procedures relating to the supervisory system.
- An insurer's supervision system must include supervision of any contractual performances;

- The annual certificate from a senior manager must state that the manager has a reasonable basis to represent and does represent, rather than just representing as provided under current law, that the function is being properly performed.
- Provides neither an agent nor an insurer shall dissuade or attempt to dissuade a consumer from certain acts including recommendation and sales of annuities made by financial professionals in compliance with FINRA standards, even if such standard would not otherwise apply to the product or recommendation at issue.
- Does not limit the insurer's obligation to have a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives.
 - The insurer:
 - May base its analysis on information received from either the financial professional or the entity supervising the financial professional and is amended to conform to this change;
 - Must monitor relevant conduct of the financial professional or an entity responsible for supervising the financial professional; and
 - The entity responsible for supervising the financial professional, information and reports that are reasonably appropriate to assist such entity in maintaining its supervision system.

The bill creates s. 627.4554(6), F.S., relating to agent training. This section provides:

- An agent must not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product-specific training standards and materials to comply the training requirements.
- An agent who engages in the sale of annuity products must complete a one-time four hour training course, which is not part of the agent's continuing education requirement in s. 626.2815, F.S., however, if the course provider submits and receives approval from the Department, the course is eligible for continuing education credit pursuant to s. 626.2815, F.S.
- Agents who hold a life insurance line of authority on January 1, 2024, and who desire to sell annuities must complete the training requirements by July 1, 2024. Individuals who obtain a life insurance line of authority after the effective date of this act may not engage in the sale of annuities until the annuity training course has been completed.
- The minimum length of training required is four hours.
- The required training must include information on the following topics:
 - The types of annuities and various classifications of annuities;
 - Identification of the parties to the annuity;
 - How product-specific annuity contract features affect consumers;
 - The application of income taxation of qualified and nonqualified annuities;
 - The primary uses of annuities; and
 - The appropriate standard of conduct, sales practices, replacement, and disclosure requirements.
- Providers of courses intended to comply with this subsection must cover all of these topics and must not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

- An agent who has completed an annuity training course before January 1, 2024, must, by July 1, 2024 complete either:
 - A new four hour training course; or
 - An additional one hour training course on appropriate sales practices, replacement, and disclosure requirements under this subsection.
- Annuity training courses may be conducted and completed by classroom or self-study methods.
- Providers of annuity training must issue certificates of completion.
- The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection must be deemed to satisfy the training requirements of this subsection in Florida.
- The satisfaction of the training requirements of any course or courses with components substantially similar to the provisions of this subsection must be deemed to satisfy the training requirements of the subsection in Florida.
- An insurer must verify that an agent has completed the annuity training course before allowing the agent to sell an annuity product for that insurer.

Insurance Agency Firm Name

Section 7 amends s. 626.602, F.S., to expand the Department’s authority to disapprove, under certain circumstances, the use of any true or fictitious name, other than a bona fide natural name of an individual, by an adjusting firm. Finally, this section repeals the provision on the grace period allowed for insurance agencies who were already using the terms “Medicare” or “Medicaid” in their firm names as of July 1, 2021, that expires on June 30, 2023.

Notice of Property Insurance Claim

Section 17 amends s. 627.70132, F.S., to provide that for loss assessment claims made by residential condominium unit owners, the notice of claim must be given to the insurer within three years from the date of loss.

Notice of Cancellation of Certain Policies

Section 15 amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal or renewal premium, to revise the cancellation or termination timeframe from 90 to 60 days. After such policies have been in effect for 60 days, no policy may be cancelled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements by the insurer within 60 days of the effective date of coverage, a substantial change of risk covered by the policy, or when cancellation is for a class of insured.

The same provisions relating to personal lines or commercial residential property insurance policies are also amended to: (1) require 20 days’ written notice for cancellation within 60 days from the date the policy is in force, and (2) prohibit the policy from being cancelled after 60 days for such reasons. The bill amends current law to provide that an insurer may not cancel or terminate a contract after a policy or contract has been in effect for more than 60 days, rather than 90 days, based on credit information available in public records.

With respect to policies that were most recently insured by an insurer that has been placed in receivership under ch. 631, F.S., Citizens, in underwriting risks, is authorized to immediately cancel a policy that is in effect for 90 days or less for any material misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

Unfair Methods of Competition and Unfair or Deceptive Acts

Section 13 amends s. 626.9541, F.S., to provide another ground for misrepresentations and false advertising of insurance policies to include failure to disclose a third party that receives royalties, referral fees, or other remuneration for sponsorship, marketing, or use of third-party branding for a policy of health insurance.¹⁶³

Hurricane Deductibles

Section 14 amends s. 627.4025, F.S., to revise the definition of “hurricane” to shorten the duration in which a hurricane deductible may be applied to a claim by modifying the start time of a hurricane to begin at the time of a hurricane warning and not when a hurricane watch or warning is issued. The bill removes from the definition “continuing for the time period during which the hurricane conditions exist anywhere in Florida,” and changes the end of a hurricane to mean 24 hours, rather than 72 hours, after the last hurricane watch or warning is issued for any part of Florida.

The bill defines “hurricane deductible” as the deductible applicable to loss caused by a hurricane.

Motor Vehicle Service Agreements

Section 18 amends s. 634.041, F.S., to provide a service agreement company that maintains a contractual liability insurance policy in lieu of maintaining unearned premium reserve may have a policy that either pays 100 percent of claims as they are incurred or 100 percent of claims in the event of the failure of the service agreement company to pay claims when due.

Mortgage Loan Regulations

Section 1 amends s. 494.001, F.S., relating to definitions. The section amends the definition of “branch office” to include “a remote location” and defines the term “remote location” to mean a location other than a principal place of business or a branch office, at which a loan originator or a licensee may conduct business.

The bill provides a licensee may allow loan originators to work from remote locations if:

- The licensee has written policies and procedures for supervision of loan originators working from remote locations;
- Access to company platforms and customer information is in accordance with the licensee’s comprehensive written information security plan;

¹⁶³ Section 624.603, F.S., defines “health insurance,” also known as “disability insurance,” is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Health insurance does not include workers’ compensation coverage, except as provided in s. 624.406(4), F.S.

- An in-person customer interaction does not occur at a loan originator's residence unless such residence is a licensed location;
- Physical records are not maintained at a remote location;
- Customer interactions and conversations about consumers will be in compliance with federal and state information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule established by the Federal Trade Commission, set forth at 16 C.F.R. part 314, F.S., as such requirements may be amended from time to time;
- A loan originator working at a remote location accesses the company's secure systems or documents, including a cloud-based system, directly from any out-of-office device such as a laptop, phone, desktop computer, or tablet, through a virtual private network or comparable system that ensures secure connectivity and that requires passwords or other forms of authentication to access;
- The licensee ensures that appropriate security updates, patches, or other alterations to the security of all devices used at remote locations are installed and maintained;
- The licensee is able to remotely look or erase company-related contents of any device or otherwise remotely limit all access to a company's secure systems; and
- The registry's record of a loan originators who works from a remote location designates the principal place of business as a loan originator's registered location, or the loan originator has elected a licensed branch office as a registered location.

Section 2 amends s. 494.0067, F.S., to expand Florida law to authorize mortgage lenders to transact business from a branch location and remote location, in addition to the principal place of business provided for under current law. In addition to a principal place of business and branch office, a remote location must also operate under the full charge, control, and supervision of the licensee.

Conduct of Money Services Businesses

Section 6 amends s. 560.309, F.S., to provide a licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same dates as the workers' compensation policy coverage period. A person who knowingly and willfully violates this provision commits a felony of the third degree under s. 560.111(6), F.S.

Section 5 amends s. 560.111, F.S., relating to prohibited acts, to provide anyone who knowingly or willfully commits a violation of s. 560.309(11), F.S., commits a third degree felony.

Crowd-funding

Section 3 creates s. 501.2042, F.S., to provide for unlawful acts and practices by online crowd-funding campaigns. The section provides the following definitions:

- "Crowd-funding campaign" means an online fundraising initiative that is intended to receive monetary donations from donors and is created by an organizer in the interest of a beneficiary.
- "Crowd-funding platform" means an entity doing business in this state which provides an online medium for the creation and facilitation of a crowd-funding campaign.

- “Disaster” has the same meaning as s. 252.34(2), F.S. Under this provision, disaster means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Under s. 252.34(2), F.S., disaster is further categorized as either catastrophic, major or minor.
- “Organizer” means a person who resides or is domiciled in this state and has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary, regardless of whether the beneficiary or the crowd-funding campaign has received donations.

When an organizer arranges a crowd-funding campaign related to or arising out of a declared disaster, a crowd-funding platform must:

- Collect and retain, for one year after the date of the declared disaster, the name, email address, phone number, and state of residence of the organizer;
- Require the organizer to indicate, on the crowd-funding campaign, the state in which they are located;
- Cooperate with any investigation by or in partnership with law enforcement; and
- Clearly display and direct donors to fundraisers that comply with the crowd-funding platform’s terms of service.

When an organizer arranges a crowd-funding campaign related to and arising out of a declared disaster, the organizer must attest that:

- All information provided in connection with a crowd-funding campaign is accurate, complete, and not likely to deceive users; and
- All donations contributed to the crowd-funding campaign will be used solely as described in the materials the organizer posts or provides on the crowd-funding platform.

Distributed Energy Generation System

Section 4 amends s. 520.23, F.S., relating to disclosures, to add an additional disclosure requirement and statements that must be included in an agreement to sell or lease a DEGS, including:

- The customer contact center phone number for the Department of Business and Professional Regulation;
- A statement in substantially the following form:
 “You should consider the age and remaining life of your roof prior to installing a distributed energy generation system. Replacement of your roof may require re-installment of the distributed energy generation system;” and
- A statement in substantially the following form:
 “Placing a distributed energy generation system on your roof may impact your future insurance premiums. You are responsible for contacting your insurance carrier, prior to entering into a purchase or lease agreement, to confirm whether your current policy or coverage will need to be modified upon installing the distributed energy generation system onto your dwelling.”

The bill specifies such statements may be satisfied by electronic delivery of a document within 24 hours after execution of the written statement.

Warranty Associations

Section 19 amends s. 634.401, F.S., to revise the definition of the term “manufacturer” for purposes of part III of ch. 634, F.S., to exclude a business that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.

Section 20 amends s. 634.406, F.S., to conform to the change made by **section 19** of the bill.

Section 21 provides, except as otherwise provided, the bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public adjusters’ compensation may be reduced due to the provisions in the bill.¹⁶⁴ The ability to utilize to contractual liability insurance policy that will service policies when a service agreement company fails to do so should reduce the costs of the policy.¹⁶⁵

¹⁶⁴ The Department of Financial Services, *2023 Legislative Bill Analysis for SB 1398*, p. 12 (Mar. 16, 2023) (on file with Senate Committee on Banking and Insurance).

¹⁶⁵ *Id.*

C. Government Sector Impact:

The bill creates a new third degree felony, which is punishable by a term of imprisonment not to exceed five years,¹⁶⁶ a fine not to exceed \$5,000,¹⁶⁷ or in the case of a habitual offender, a term of imprisonment not to exceed ten to fifteen years.¹⁶⁸ The new third degree felony may increase state court revenues and expenditures. In addition, the bill may have an indeterminate negative state prison bed impact. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0067, 520.23, 560.111, 560.309, 626.551, 626.602, 626.854, 626.860, 626.875, 626.8796, 626.8797, 626.9541, 627.4025, 627.4133, 627.4554, 627.70132, 634.041, 634.401, and 634.406.

This bill creates section 501.2042 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 18, 2023:

The committee substitute:

- Clarifies a licensee may allow a loan originator to work from a remote location if such originator has access to documents, as well as the company’s system, directly from any out-of-office device through a vital private network or system;
- Revises the definition of “disaster” to have the same meaning as in s. 252.34(2), F.S.;
- Revises an organizer’s responsibilities relating to a crowd-funding platform for campaigns related to and arising out of a declared disaster;
- When entering into public adjuster services after July 1, 2023, a public adjuster is prohibited from collecting a fee for services or contracting with third parties on behalf of the named insured unless certain conditions are met, and requires a public adjuster to pay third party fees in specified circumstances;

¹⁶⁶ Section 775.082, F.S.

¹⁶⁷ Section 775.083, F.S.

¹⁶⁸ Section 775.084, F.S.

- Removes a provision providing public adjuster responsibility and a provision setting the commission rate that may be charged on the difference between the settlement offer and the actual settlement amount;
- Modifies a public adjuster's compensation to no more than one percent, rather than up to \$1,000, of payments or commitments to pay a claim made within a specified time that is equal to or greater than the policy limit;
- Prohibits a public adjuster from charging any percentage of the amount of insurance claim payments or settlements paid to the insured where the payment or written agree to pay occurs before to the public adjuster contract is executed;
- Provides the Department of Financial Services (Department) may inspect a public adjuster's records relating to a particular claim or loss Monday through Friday, 8:00 a.m. – 5:00 p.m., excluding state holidays;
- Amends the provision which requires an unaltered copy of the public adjuster contract to be provided to the insurer within 10 days, to within seven days, after execution, and clarifies that the unaltered copy may be provided to the insurer's representative;
- Provides a public adjuster may not receive compensation for services prior to the date the insured receives an unaltered copy of the executed contract or the date the contract is submitted to the insurer. Requires the public adjuster to maintain proof of receipt by the insured and proof of submission to the insurer for not less than five years;
- Allows an insured to rescind a public adjuster contract if a written estimate has not been provided to the insurer within 60 days after execution of the contract for services, unless such failure was caused by factors beyond the public adjuster's control, and provides the cancellation period for failure to provide a written estimate terminates on the date such estimate is provided; requires the notice that must be included in the public adjuster services contracts to be updated to include these provisions;
- Provides Citizens Property Insurance Corporation, may cancel certain policies within 90 days or less for misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage;
- Removes the amendment to the time period for which insurance agents must inform the Department of change of name or specified contact information, and retains current law that requires the notification be submitted within 30 days after such a change;
- Repeals the provision on the grace period for using the terms "Medicare" or "Medicaid" in insurance agency firm names;
- Provides notice of claims made under s. 627.714, F.S., must be given to the insurer in accordance with the terms of the policy within three years of the date of loss; and
- Makes technical and conforming changes.

CS by Banking and Insurance Committee on March 22, 2023:

- Clarifies the definition of "branch location" to mean a location other than specified locations, including a remote location;
- Provides that a person who violates s. 560.309, F.S., relating to cashing corporate checks that exceed certain amounts of workers' compensation policy coverage

- amounts, commits a third degree felony punishable by up to 5 years imprisonment, \$5,000 fine, or enhanced penalties under habitual offender provisions;
- Prohibits a licensee from cashing corporate checks where the aggregate face amount for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the policy coverage period;
 - Amends the revocation period for which an insured or claimant may cancel a public adjuster's contract without penalty during a state of emergency in certain circumstances from "within 30 days after the date on which the contract is executed," to "within 30 days after the date of the event, or 10 days after the date on which the contract is executed, whichever is longer," and makes conforming changes to the notice that must be given to insureds;
 - Authorizes an insured to cancel a contract with a public adjuster with no additional penalties if an estimate is not provided within 60 days, rather than 45 days provided in the bill, after executing the contract; and makes conforming changes to: (a) the notice that must be given to insureds on this issue and (b) provisions required in public adjuster's contracts;
 - Clarifies that, in circumstances when a public adjuster must not receive a commission, it is based on the amount "timely paid or committed policy limits," rather than "paid by the insurer to resolve the claim" that is provided in bill;
 - Provides public adjusters are entitled to \$1,000, instead of "reasonable compensation" from the insured when an insurer either pays or commits to pay the policy limit within 14 days from the date of the reported loss;
 - Removes Section 9 relating to public adjuster's errors and omissions insurance;
 - Requires the settlement of claims to be made by "payment," rather than "check," and specifies that the first payment must be made "solely" to the public adjuster;
 - Amends the time within which an unaltered copy of the public adjuster's executed contract must be provided to the insurer from three days in the bill (30 days in current law) to 10 days after execution of the contract;
 - Amends the disclosure a public adjuster must provide to an insured to explain that an insured has 60 days, rather than 30 days provided in the bill, after executing a contract resulting from a state of emergency to rescind it;
 - Amends the new provision under FDUPTA, relating to misrepresentations and false advertising of insurance, for failure to disclose that a third party receives certain remuneration for sponsorship, marketing, or branding for a "policy of health insurance," rather than "health insurance contract";
 - Amends the title of s. 627.4554, F.S., from "Annuity Investments" to "Suitability in Annuity Transactions";
 - Clarifies that the provision requiring an agent to exercise reasonable diligence, care, and skill in making recommendations does "not" require, rather than "does" require, the agent to have ongoing monitoring obligations;
 - With respect to an insurer's supervision system, clarifies that the annual certification obtained from a senior manager "does represent," rather than "does not represent," that the function is being properly performed;
 - Deletes from the agent training provisions the requirements:
 - To register as a continuing education provider and to comply with the rules and guidelines provided in s. 626.2815, F.S.;

- That the OIR approve the specified training courses;
- For classroom or self-study methods, and the issuance of certificates of completion, to be in accordance with s. 626.2815, F.S.;
- For compliance with reporting requirements;
- Deletes the provision that authorizes an insurer to satisfy the requirement to verify training compliance in certain ways, such as by obtaining certificates from certain databases;
- Amends s. 634.401, F.S., to revise the definition of the term “manufacturer” relating to the regulation of service warranty associations to exclude a business that maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service, and makes conforming changes in s. 634.406, F.S.;
- Amends the effective date to, except as otherwise provided, July 1, 2023;
- Makes conforming changes by changing “suitability information” to “consumer profile information” (which is newly defined to replace “suitability information” in the bill); and
- Makes technical amendments.

B. Amendments:

None.